1846.

SUPREME COURT OF THE UNITED STATES.

No. 177.

JOSEPH JASIGI AND THOMAS A. GODDARD, PLAINTIFFS IN ERROR,

vs.

JAMES BROWN AND THOS. B. CURTIS, TRUSTEE OF SAID BROWN.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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GIDEON, print.

[SEAL.] UNITED STATES OF AMERICA,
Massachusetts district.

At a circuit court of the United States, begun and holden at Boston for the first circuit and district of Massachusetts, on Saturday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-three, before the honorable Benj. R. Curtis, associate justice; Peleg Sprague, district judge.

Joseph Jasigi and Thomas A. Goddard, of Boston, in the county of Suffolk, and State of Massachusetts, and citizens of said State, merchants and co-partners, doing business under the name and style of

JASIGI & GODDARD, plaintiffs,
vs.
JAMES BROWN, of New York, in the State of New York, a citizen of said State, merchant, principal, and THOMAS B. CURTIS, of said Boston, merchant, trustee of said Brown. } In an action of tort.

This suit was commenced in the supreme judicial court of the State of Massachusetts, on the nineteenth day of July, A. D. eighteen hundred and fifty-two, and was entered at the then next November term of said court holden at Boston, in said State, when and where the defendant appeared by his attorneys, and at the time of entering his appearance filed his petition for the removal of the cause for trial into the then next circuit court of the United States for this district, and offered sufficient surety for his entering copies of the process against him, and there appearing: whereupon the said State court accepted the surety and determined to proceed no further in the cause, and such copies were here duly entered at the last May term of this court, when the parties, by their respective attorneys, appeared, and the action was thence continued to the present term of this court, when the plaintiffs, to wit, on the twenty-seventh day of October, A. D. 1853, by leave of court, filed the following amended declaration, viz:

In a plea of trespass on the case.

For that whereas the plaintiffs, on the fourth day of April, A. D. eighteen hundred and fifty-one, were, and for a long time prior thereto had been, and still are merchants, owners, and vendors of wool and other merchandise at said Boston; and whereas, prior to the said fourth day of April, the plaintiffs had from time to time, at the request of one Orrin Thompson, of Enfield, in the State of Connecticut, and of two certain corporations established by law in said State of Connecticut—the one entitled the Thompsonville Company, and the other entitled the Tariff Manufacturing Company—sold and delivered to each of said two corporations sundry parcels of wool, and taken and received therefor the several promissory notes of said respective corporations, payable to

its treasurer or order, and by him endorsed to said Orrin Thompson or order, and by said Thompson endorsed to the plaintiffs.

And whereas, on or about said fourth of April, the plaintiffs, with a view to future applications by said Orrin Thompson and said corporations, for further purchases of wool of plaintiffs by said corporations then anticipated and expected by plaintiffs, and with the further expectation and belief that said corporations might be desirous to purchase and pay for the same by their respective promissory notes, payable at a future period and endorsed by said Orrin Thompson; and the plaintiffs being then and there doubtful about, and having a distrust of, the pecuniary means, ability, property and condition of each of said corporations and of said Thompson, and well knowing that the defendant knew and was informed as to the pecuniary means, ability, property and condition, as well of said corporations as of said Thompson; and being desirous to obtain from defendant his opinion or information in relation to the same, to govern and direct the plaintiffs as to the safety and expediency of making such future sales upon the credit of said corporations and of said Orrin Thompson as aforesaid, they, the plaintiffs, did apply to one Thomas B. Curtis, of said Boston, who was then and there the agent and correspondent of defendant, and did request the said Curtis to write and transmit a letter to the said defendant, asking the opinion of said defendant as to any possibility of loss by selling merchandise to a large amount on credit to said corporations or either of them, or to said Orrin Thompson; and the said Curtis, there afterwards, on the fifth day of said April, pursuant to said request, did write and transmit to said defendant a letter desiring the opinion of said defendant as to any possibility of loss by selling largely merchandise to said Thompsonville Company or said Orrin Thompson; and there afterwards, on the seventh day of the same April, the said defendant, well knowing the premises, and that each of said corporations and said Thompson were in embarrassed and insolvent circumstances, and not fit to be trusted, but contriving and fraudulently intending to deceive and injure the plaintiffs, and all persons to whom his letter hereinafter mentioned should be shown, or the contents thereof be communicated, and who should thereby be induced to sell property to said corporations or said Thompson on credit, and well knowing and intending that said letter would be exhibited, or the contents thereof stated to such persons as had inquired, or might thereafter inquire, of said Curtis in relation to the credit of said corporations, and of said Orrin Thompson, and expecting and intending that persons so inquiring should and would be influenced thereby to give credit to said corporations and said Orrin Thompson, did write and transmit a letter in reply to the said letter of said Curtis, wherein the said defendant did, among other things, state that said Orrin Thompson then considered himself fully worth four hundred thousand dollars; that the sum due from each of said corporations to a certain mercantile house in said New York, negotiating in the name of Thompson & Co., was about three hundred and seventy-six thousand dollars; that from a statement made by said Orrin Thomp-

son of the business of said corporations, they, said corporations, were each of them doing a good, nay a very profitable, business, and that he, said defendant, felt that in making sales to them then, no more than the ordinary business risk would be run.

And the plaintiffs further aver that afterwards, and before the sale and delivery by them of the several parcels of wool to said corporations hereinafter set forth, the said Curtis did exhibit to the plaintiffs the said letter of said defendant, and that they, by means and in consequence of said statements of said Brown, so in said letter contained, and not knowing to the contrary, but believing the same, and believing therefrom that said corporations and said Orrin Thompson were in good pecuniary circumstances, and fit to be trusted with goods on credit, on the eleventh day of May then next, and at divers other days and times between that day and the sixteenth day of September then next following, at Boston aforesaid, were induced to give credit to both said corporations and said Orrin Thompson, and did sell and deliver to each of said corporations divers parcels of wool on credit to a large amount in value, to wit, the sum of fourteen thousand dollars, to each of said corporations, to wit, at said Boston, and did agree to receive, and did receive, in payment therefor, the promissory notes of each said corporations for the goods so sold them respectively, payable at a future day to their respective treasurers or order, and by said treasurers endorsed to said Orrin Thompson, or his order, and by said Thompson endorsed to the plaintiffs; and the plaintiffs aver, that in truth and in fact the said corporations and the said Orrin Thompson, at the time said letter of said defendant was so written, and at the time the same was so exhibited to plaintiffs, were each in embarrassed and insolvent circumstances, and not fit to be trusted with goods on credit, which was well known to said defendant; and the plaintiffs further aver, that the said Orrin Thompson did not, as in said letter set forth, consider himself fully worth four hundred thousand dollars, and the same was then and there, when said letter was written, well known to said defendant. And the plaintiffs further aver, that if said Orrin Thompson had held or expressed any such opinion, the same was a false, unfounded, and mistaken opinion, and was then and there, when said letter of defendant was written, known by defendant so to be, and said Orrin Thompson was then and there largely in debt to said defendant and other persons, and was insolvent and unworthy of credit, which was well known to defendant, and the whole property of said Orrin Thompson had been theretofore by him conveyed in mortgage, and in pledge to said defendant and others, which was well known to defendant; all which facts and things were unknown to plaintiffs, and were in said letter of said defendant suppressed, with intent on the part of defendant to deceive and defraud all such persons to whom said letter of defendant should be exhibited, or the contents thereof be communicated, and to induce them thereby to give credit to said Orrin Thompson and said corporations; and the plaintiffs further aver, that the sum due from each of said corporations to said Thompson and

company, at the time said letter was written, and for a long time previous thereto, was not about three hundred and seventy-six thousand dollars, but a much larger sum, and that the same was then and there well known to said defendant. That said Orrin Thompson had not then and there, or at any time, made any statement of the business, showing that said corporations, or either of them, were doing a good, nay a very profitable business, and the contrary thereof was well known to said defendant; and the said defendant did not, at the time of writing his said letter, feel that, in making sales to said corporations, no more than the ordinary business risk would be run; and the said defendant, at the time his said letter was written, well knew that both said corporations and said Orrin Thompson were in embarrassed and insolvent circumstances, and not fit to be trusted with goods or credit. And the plaintiffs further say, that the said several sums of money, so due them upon said sales of said wool, so made by them since the said letter of defendant was shown to them, and the said promissory notes given therefor, are due, and are still wholly unpaid, and that the said corporations and said Orrin Thompson are wholly unable to pay the same, and that the plaintiffs have wholly lost the sums so due them as aforesaid.

And now the defendant, by his attorney, E. Mervin, comes and defends, &c., when, &c., and for plea says that he is not guilty in manner and form as the plaintiffs in their declaration have alleged against him, and of this he puts himself on the country. And the plaintiffs, by their attorneys, Bartlett and Choate, do the like. Issue being thus joined, the cause, after a full hearing, is committed to a jury, sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein, and upon oath say, that the defendant is not guilty in manner and form as the plaintiffs in their declaration have alleged. It is therefore considered by the court, to wit, on this sixth day of February, A. D. 1854, that the said James Brown recover against the said Joseph Jasigi and Thomas A. Goddard his costs of suit, taxed at six hundred and thirty-five dollars and seventy-three cents.

Upon the trial of the above entitled cause, after the evidence was closed on both sides, and before the issue was submitted to the jury, the plaintiffs filed their bill of exceptions, which was allowed by the court, and is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Massachusetts district.*

October term, 1853.

JOSEPH JASIGI AND THOMAS A. GODDARD
vs.
JAMES BROWN.

Bill of exceptions.

Be it remembered, that at a term of a circuit court of the United States for the first circuit, holden at Boston, within and for the district

of Massachusetts, on the fifteenth day of October, eighteen hundred and fifty-three, by the honorable Peleg Sprague, district judge, came Joseph Jasigi and Thomas A. Goddard, of Boston, in said district, merchants and copartners, and by an action on the case declared against said James Brown, of New York, in the district of New York, and a citizen of the State of New York, as by the writ and declaration of record will appear, to which the defendant pleaded the general issue, which was joined; and thereupon came on for trial before the said circuit court, at the said October term, before a jury empanneled for that purpose; and the said plaintiffs then and there, to maintain and prove the issue on their part, submitted to the court and jury the documents and oral testimony, as follows, to wit:

Thomas B. Curtis, called by plaintiffs.

In April, 1851, I was the agent of Brown, Brothers & Co., of New York. Their business was banking. It was an extensive business. I have been their agent for eight years,—that was my principal business. In April I wrote a letter to Mr. James Brown, at the request of Mr. Jasigi, and received a reply from them—it was a confidential reply. I showed the reply at the time of its receipt to Mr. Jasigi and Mr. Skinner, his friend. I never showed it to any body else until after the failure of the Thompsons. I have no recollection of showing it to any one but Jasigi and Skinner till after the failure. If I had I should probably recollect it. I did not show it to Mr. Goddard. I have no recollection of stating its contents to any body till after the failure. As to Mr. Patrick Grant, it is very possible I may have stated its contents in substance to him. The letter is marked confidential. The counsel for the plaintiffs requested the witness to produce the letter; to this he objected on the ground that it was confidential. The counsel for the plaintiffs then asked him this question: How did you know it was confidential? To which the witness answered: "All I know was by the writing itself and the circumstances—all I say is, it was a confidential letter. When I wrote to Mr. Brown, I did not let him know that the information was for any one else than myself."

The court there directed the witness to produce the letter. The counsel for the defendant then asked that it might be read, and it was read. Counsel for the defendant then objected to its being put in evidence, but the court overruled the objection, and witness produced the following letter:

BOSTON, *April 5th*, 1851.

JAMES BROWN, esq're.

DEAR SIR: I have your note of yesterday, but have scarcely had a moment to peruse it this morning. My object at the moment is to ask your opinion as to any possibility of loss by selling largely to the Thompsonville Company or Orrin Thompson. Whatever that opinion may be, it will be discreetly used by myself. I also want your views as to the unlooked-for high exchange on England—to what cause is it

Cross examined.

Mr. Jasigi came to me on the 5th of April, and stated that he held a large amount of notes of certain factories in Connecticut endorsed by Orrin Thompson, of New York; that there had been a failure recently in New York, Austens & Spicer, by which he thought the factories, or Orrin Thompson, or all of them, would lose money; and that he felt anxious as to the fate of the paper he held. He did not state the amount he held exactly, but I was led to believe it was about $40,000. He proceeded to say that Mr. James Brown was a friend of Orrin Thompson, and that he, Jasigi, had himself had heavy dealings with him, and that he wished me to write to Mr. James Brown and ask him about the standing of Thompson and his property. I accordingly wrote, but I did not state in my letter that I wrote at Jasigi's request.

The answer was due on the 8th of April, and on that day Jasigi came and asked if I had a reply. I told him I had a confidential answer. He begged me to let him see it, and persuaded me to do so, and I showed it to him. My reply to him was that I had a confidential answer. He said he hoped I would let him see it, and I showed it to him. There was no one with him at the time. After reading the letter he asked my opinion of its contents, and what probability there was of his getting the money for his notes. I told him I thought he would get it. He then asked me to let him take the letter to show to his friend, Mr. Skinner, with whom he said he always advised. I again said the letter was confidential, and that I could not suffer it to go out of my office. He then said: "Will you let Mr. Skinner see it here?" repeating that he always advised with Skinner on matters of importance, and that he wanted him to see it. Upon this solicitation I consented, and Skinner came with Jasigi, and read the letter. There was then a general conversation of from 20 minutes to half an hour. Can't recollect exactly what passed. I was asked by Jasigi as to the chance of his getting his money, and I expressed a favorable opinion. It was stated, I think, by Jasigi, that the notes were payable in 2 or 3 months. Mr. Skinner did not seem so favorably impressed. He said: "I don't know—I can't think so favorably of this as Mr. Curtis does." I never had any business transactions with Mr. Jasigi or his firm in my life—certainly not as agent for Brown, Brothers & Co. We were near neighbors and friends. [I was led to ask this information and to communicate the result to him, in consequence of the friendly relations that had long existed between us, and further, because I thought it would tend to relieve Mr. Jasigi's mind,]* and not with any view to future sales. If it had not been for that state of facts, I should not have shown him the letter.

Jasigi did not state to me that he contemplated making further sales to any of these parties. Mr. Brown never authorized me to exhibit the letter to any one; I don't know when Mr. Brown first knew that the letter had been shown to any body; don't know that he knew of it

*The part in brackets objected to by the plaintiff, and objection overruled.

till after the failure of Thompson & Co.; after that failure I had an interview with Mr. Jasigi, on the 23d of September, 1851. I met him in the street; he accosted me in a state of excitement; he said, "Mr. Curtis, Thompson has failed, and the Thompsonville Factory has failed." I said, "I am sorry, but you have got your money." He said, "Yes, I have got the money that was owing to me, but I have trusted them again." I expressed surprise that he should have trusted them again; he then alluded to the letter of James Brown. I said to him, "On that letter you should not have trusted them again;" he then said, "Will you show me that letter again?" I told him I would if he would come to my house that afternoon. The letter was then locked up in my office. This was on Sunday; accordingly I went to my office and took the letter home to my house. Jasigi came and read it; he said, "Mr. Curtis, is this the same letter you showed me in your office?" I said it was. Said he, "Is this the same letter that Mr. Skinner and I read in your office some months ago?" I replied that it was. He asked was there no other letter? I replied there was not. He then said, "Mr. Curtis, if you did not say that this was the same letter I read in your office, I should say that I never had seen this letter before."

I had a subsequent interview with Mr. Jasigi. At the former interviews about my letter and Brown's reply, there was nothing said about any anticipated or prospective operations by Jasigi. The conversation was confined to debts which had then occurred. A week or 10 days afterwards, after the letter from Brown had been shown, Mr. Jasigi was at my office, and I think Mr. Skinner was with him; he said he had received $10,000, and had been assured by Orrin Thompson that he should have the rest, and then there was some conversation about future sales, but not till then.

Some of our clients prior to this had been in the habit of selling wool to Thompson & Co. There were 5 or 6 firms, importers of wool, who had credits with me. They were George M. Barnard & Co., Michael Simpson & Co., Wm. B. Reynolds & Co., N. Reggio, Zipcy & Wyman, and Larkin & Stackpole.

It was highly important to me and my principals that I should know the standing of this great concern, because large amounts of credits were being invested in wool by houses which might or might not be jeoparded by selling to that concern; I mean invested by correspondents of Brown, Brothers & Co., who had credits from them.

Examination in chief resumed.

I have formerly given a deposition on this matter; my memory was pretty good then, and is now, too.

Interrogated by Mr. Bartlett.

Will you look at the 10th and 11th interrogatories and answers contained in that deposition, viz:

10th int. How soon, if at all, did Mr. Jasigi call on you, and what occurred?

Answer. Mr. Jasigi called on me the eighth of April; I then told him I had a letter from James Brown, and showed it to him.

11th int. Did he or not ask to borrow the letter; and if so, did he take it away?

Answer. He asked to borrow the letter; I told him it was a confidential letter to me and I could not permit it to go out of my hands.

Will you state if the answers to these interrogatories are correct? Witness replied they are correct.

The witness proceeded:

Mr. Jasigi said the credits were due to him. I never knew that he had sold all his notes; he asked me if I would guarantee the debt. At my office he took the letter in his hands and read it. He told me he felt very anxious, having heard of the failure of Austens & Spicer, which he thought might affect Thompson & Co., but he made no suggestion as to what he should do. After the failure I expressed my surprise that he should have sold again after reading the letter; at the time the letter was received I thought it was favorable for Jasigi's getting his debt, and I offered to guarantee it for 2½ per cent.

I spoke of Mr. Brown as a high merchant; may have said cautious, prudent, and guarded, but can't recollect. After I had expressed my surprise that Mr. Jasigi had trusted them again, he said he had trusted again as the letter from Mr. Brown was favorable to the concerns, and he then asked me to let him see the letter again.

Cross examination resumed.

When Jasigi first called I stated to him that the letter was confidential, and I do not intend to be understood as altering that statement.

The deposition mentioned was taken the afternoon before I embarked for Europe. The debt then existing to Jasigi was to fall due in 2 or 3 months, as I understood, and an agent was to go to Europe to negotiate bonds for Thompson and his concerns. If he had done so all would have gone well, but I knew the result could not come round till after these two or three months. The failure of the negotiations would be fatal to the companies. We often credit and guarantee for two or three months when we would not do so for a longer time.

James Vila, called by plaintiff.

Am a commission merchant for the sale of wool in Boston, and have been so for 30 years. I have been the broker of Jasigi & Goddard; was so prior to the spring of 1851. The plaintiffs had been in the habit of selling the Thompsonville and Tariffville companies on credit; Orrin Thompson endorsed the notes of the corporations. On the 12th of December, 1850, there was a sale to Orrin Thompson and the companies, or for them, of property to arrive; the result of the contract was a sale for cash or satisfactory paper. Prior to April the factories had applied for and taken 6 bags of Salonica wool as a sample of a large lot to arrive; these sample bags were taken in January; the sale of this wool was made May 19th, 1851.

Thomas Quincy Brown, called by plaintiff.

Am book-keeper for Jasigi & Goddard; they had been in the habit of selling wool to Thompson, and to the factories prior to April, 1851, on the paper of the factories, endorsed by Orrin Thompson in almost every instance. The last notes of this description received by plaintiffs, prior to 7th April, were sent to New York to a broker to be sold; they were sent from time to time; the last sales were made on the 18th of February, 1851. On the 7th of April, 1851, Jasigi & Goddard had one note of the parties before named for $795, running on time; that was the only one they had. In December, 1850, there was a sale of wool to arrive; it was on credit for satisfactory paper, otherwise for cash, at a discount of 4 per cent. All that was paid was paid in cash; there was never any paper for it; it was delivered in January and February, immediately after arrival. In the course of business the goods would be delivered first and then the bills approved; there is a delay between the transmitment of the samples and getting the approbation of the bills. On the 7th of April, 1851, a part of this sale was unpaid for. I know that there was a lot of Salonica wool in the hands of Vila, and one or both the companies had taken samples of it. The sales of this Salonica wool were consummated on the 19th of May; I think the first sale was after the 7th of April; have no recollection of any other previous to that.

(Witness here produced account sales of wool sold by plaintiffs to the corporations from April 7th to September 16th, shown.)

This was made up by me. It is an account sales of the Thompsonville and Tariffville Companies with Jasigi & Goddard, and a transcript from the sales book. The sales here mentioned were made to my knowledge, and the notes were taken. I here produce them.

(The notes were here produced and identified by witness. They bore date as follows: From Thompsonville Co., May 19, June 26, July 15, August 4, August 5. From Tariffville Co., May 19, July 15, August 1, August 8, September 15; amounting in all to $24,866.) The notes being signed by the said corporations respectively, and endorsed by Orrin Thompson.

Cross examined by Merwin.

I can't state the exact amount owed by the companies to Jasigi & Goddard on the 7th of April. The only note they had was the one for $795. That was from the Thompsonville Co. Can't say what cash was due on book balance. Can't say it was not over $30,000. There was a large balance on the cash book then. Can't state the amount of notes due in January and February, 1851. I know they were sent to New York by letters written at that time. Can't say I sent any of them myself. I have seen the account sales of the notes, and know the money was received for them. Know that those notes were not endorsed by Jasigi & Goddard. Can't say I saw them when they were sent on. Know they did not bear the endorsement of Jasigi & God-

dard, from the reason that they were sent on to be sold. I knew this from my knowledge of the business and my observation. I knew they were sent to a house in New York to be sold, and know why they were sent. I can't say I enclosed any of them, or saw them when they were sent. I do say I have seen them, but can't say how long before they were sent to New York. The balance due on the 7th of April was on a sale for satisfactory paper or cash, and the parties had elected to pay cash, and so informed Messrs. Jasigi & Goddard. There was a balance on a cash sale then due. Do not remember the state of the money market in Boston in January and February, 1851.

Direct examination resumed by Bartlett.

I heard it talked of by Jasigi & Goddard about sending the notes to New York. I saw the letters in which they were sent. Jasigi & Goddard sent no other notes there but those of these concerns. They must have had others; it is impossible it should be otherwise.

Richard F. Wyman, called by plaintiff.

Am a wool dealer. In April, 1851, had an application to sell to the Thompsonville Co. Declined to sell except for cash. Then I made some further inquiries. Went to Mr. Thos. B. Curtis, and he said he would inquire for me, and if I would call in a few days he would give me an answer. I told Mr. Curtis when I called on him that I understood Brown, Brothers & Co. were stockholders in the company. Afterwards went again to Curtis. He told me he had made the inquiries, and that they (the Thompsonville Company) were considered good. That he considered it a fair risk for $15,000 to sell to them. I said to him it was about $15,000, and rather a large amount for one risk. I did not sell at that time because of a difference between us as to the price. In June, at two times, I sold them about $16,000 worth, and have lost the debt.

Cross examined by Merwin.

At this time, and for the previous five or six years, I had had credits on Brown, Brothers & Co. for from 2 to £3,000 sterling. Did not ascertain the state of our account, or amount of indebtedness at that time.

Patrick Grant, called by plaintiff.

Am a member of the firm of William B. Reynolds & Co., merchants, in this city. I was applied to, to sell wool to the Thompsonville Company in the spring of 1851. The application was made to me through a broker in this city, at least I think so, by Mr. Bond, the correspondent of a New York house. I called on Mr. Jasigi after this. In consequence of what passed between Mr. Jasigi and myself, I went to Mr. Curtis and made an application to him to write to Brown, Brothers & Co., in respect to the standing of the Thompsonville Company. He engaged to do so. I afterwards called to learn if he had so done. Can't tell the precise date of this—the letter in reply came in course. The

letters now shown me of T. B. Curtis to Brown, Brothers & Co., 26th June, 1851, and of Brown, Brothers & Co. to T. B. Curtis, of 27th June, 1851, are the letters I refer to. I did sell to the Thompsonville Company the wool for which the application was made, between $9,000 and $10,000 in amount. Got notes of the Thompsonville Company, endorsed by Orrin Thompson, payable in six months, for the amount. Believe all the notes were on six months. The Thompsonville Company failed, I think, about the 29th of September. In consequence of the letters I saw, I went to New York and saw Mr. James Brown; it could not be far from the 15th of October. No one went with me, but I met in New York Mr. Jasigi and Mr. Kendall. I went on by appointment with them, but think we did not go in the same train. We went for the purpose of seeing Brown, Brothers & Co., and to investigate the affairs of the Thompsonville Company. We waited on Brown, Brothers & Co. together. At the interview, James Brown, Stewart Brown, Mr. Jasigi, Mr. Kendall, and myself were present.

The letter of the 27th of June was repeatedly referred to by all of us, I believe, and also the 7th of April letter. These two letters formed the basis of the conversation. I cannot say all referred to them. Mr. Jasigi referred to them both. He was the spokesman on the occasion. I referred to them, and they were the basis of the conversation. Both the Browns referred to the letter of the 27th of June. Without pretending to recollect the exact words, James and Stewart Brown both alluded to that letter as conveying but very little. James Brown said it spoke generally favorably, but the letter was not of much consequence. This was with regard to the letter of June 27. Do not recollect that there was much conversation as to the mercantile effect of that letter. James Brown said nothing about that letter being written without his knowledge or approbation; he said nothing of that sort.

I had a subsequent conversation about my own affairs when both the Browns were present. It was about this same business, in the winter three or four months after this. It must have been towards the end of January. In this last interview the conversation undoubtedly turned on this matter. I stated that I had sold on the faith of the letters, and we discussed the merits of them both. James Brown made no remark to the effect that he knew nothing of the letter of the 27th of June, or that it was not written with his approbation, or any thing of that kind. I told him in the first interview, about the first letter, who communicated it to me. It was Mr. Jasigi. I think I had seen it before I went on in October. I called on Mr. Curtis, after the failure of the company, and conversed with him about it, and I think he showed me the letter. I never saw the letter till after the failure, but got its contents from Mr. Jasigi. These are the only conversations I had with Mr. James Brown about the letter of the 27th of June. Mr. Jasigi and Mr. Kendall were not with me at the second interview. Mr. Stewart Brown was present. This letter of June 27 was distinctly and repeatedly referred to by all the parties at both times. The conversations were long, and both letters were referred to. While Stewart Brown

was talking about it, no suggestion was made by Mr. James Brown that the letter was written without his knowledge or approbation.

Mr. Grant (in continuation in chief.)

We went in October, 1851, to Brown, Brothers & Co. I went to see as to the failure of the Thompsonville Company, so far as I was concerned, and to show, as I hoped to do, to Brown, Brothers & Co. that there was a moral responsibility on their part to respond to these notes. That was my object individually. We all went together and were very politely received. The letter of the 7th of April was very fully discussed. Mr. Jasigi was the spokesman, and he commenced. He stated that he had applied to Mr. Curtis to know with respect to the Thompsonville and Tariffville Companies, and Orrin Thompson; to know what their credit was, and whether it would be safe to sell to them. He connected me with the letter of 7th April. I had nothing to do with that first letter. I did not then state that to Mr. Brown. He then alluded to the letter written for me on my application to Mr. Curtis. Copies of these letters were there, but I don't think they were produced; I am not certain, but to the best of my recollection they were not. The Browns had a copy. The letters were both distinctly referred to; distinctly recognised and commented upon, and their various parts were distinctly discussed. I had copies in my pocket, and I dare say Mr. Jasigi had, but whether they were distinctly read and produced I cannot recollect precisely. Mr. Jasigi then commented on the failures of the companies and on the letters. It is utterly impossible for me to recollect all his words—he spoke 15 or 20 minutes. He commented on some of my transactions and some of his. Some of my wool had been taken a day or two before the failure by the defendant. He stated that he had sold and we had sold on the faith of these letters, and that as all their property had apparently been attached by Brown, Brothers & Co., we ought, in a moral point of view as to responsibility, to share part and parcel with those who have attached. He was the spokesman for us all, connected us all together, and stated all our cases. The conversation was a long one. I can swear to some expressions as the identical ones used, but as to others only to the general sense. Mr. Brown, in reply, began in reference to what Mr. Jasigi had said, and stated that he regretted very much that we should have been losers by these failures; that the letter of the 7th of April was a guarded one, (that was the expression Mr. Brown used;) and that as to the second letter of the 27th of June, that was nothing but a statement that "we continue to have a favorable opinion of the concerns." He proceeded to say that the connection of Brown, Brothers & Co. with Mr. Thompson had been of long date; that they had had a great number of transactions together, and that at the time the April letter was written, they (B., B. & Co.) had intended to carry Mr. Thompson through. (That was the identical expression then used by Mr. Brown.) But that Thompson had deceived them. He repeated several times that this was a guarded letter, and as it was written in entire good faith, and as they

had lost much more than we had subsequently to the writing of the letter, they did not see how there could be any responsibility resting on them. There was a good deal of conversation after that, but this was the substance of the main conversation. As we got up to go, we were all standing together around the green table, and Mr. Stewart Brown stated with a sort of repetition of all the facts that had been mentioned and which I have stated, that if we had called on them it would have been different. His words were: "If you had called on us, gentlemen, and conversed with us, instead of writing, you would not have sold this wool." By a repetition of the facts I mean this: It was several times mentioned that the letter was a guarded letter; that Thompson had long had business with Brown, Brothers & Co.; that they had great confidence in him; that at the time the letter was written they had lost their confidence, but still meant to carry him through in good faith; but being unable to do so, and having lost their confidence, the letter was guarded. That was the basis of the conversation. They repeated that they had lost more than we. We then parted. These gentlemen said they would look over the matter again, review the whole facts, and if there was any responsibility resting on them they would meet it. We parted, and I went away with the rest. While we were there I had a conversation with Mr. James Brown; I sat next to him at the green table; I asked him if it was true, as I had heard, that he had had all the property of Orrin Thompson conveyed to him when that first letter was written. He replied to me, "No, sir, not all his property, but his real estate." I then mentioned to him that this was an important fact, and it was not alluded to in the letter of the 7th of April. His reply was that he had paid over this money to Thompson, and it did not seem to be an important point, as he might have had the money. I think this conversation was aside altogether. Nothing was ever paid by Brown, Brothers & Co. to me. I left New York and came home. Had no further direct information from them, but afterwards learned, I think, through Mr. Curtis, that they refused to acknowledge any responsibility. There was no suggestion at all made by any one at the interview that the letter was confidential, or had been improperly shown. Nothing has ever been paid to me by Orrin Thompson, or either of the companies, since then.

Cross examined by Merwin.

The two letters were the subject of the conversation; the moral responsibility of Brown, Brothers & Co. was the particular topic when they said it was a guarded letter; they said the letter was a guarded one, and that they were not responsible. Both of them used this expression; they repeated it over and over again, half a dozen times. The principal conversation was on the moral responsibility of Brown, Brothers & Co., as based on these two letters; we put our claim on the contents of these letters and the accompanying facts, that they had all the property, and that a part of this very wool had been attached by them. I don't recollect any allusion being made as to the reason of

the letters or the circumstances under which they were written, except as I have stated; they were both acknowledged as bearing on the case. I should be afraid to swear to any identical words used beyond what I have testified to. Mr. Jasigi brought forward the case resting on these letters, and these two gentlemen proceeded to give their reasons why they were not responsible; that is what I mean by saying the letters were acknowledged. Mr. Jasigi said he had sold on the faith of the letters; they said they were not responsible, for the letters were guarded; nothing was said about deceiving. What I intend to convey is this, that the letters were guarded letters, because at the time they were written the confidence of Brown, Brothers & Co. in Thompson had been shaken. They were written under the feeling that the confidence was shaken, and therefore they were written in a guarded manner. Mr. Brown said repeatedly that they had advanced much more than we had, and should lose much more, after the letter was written. Don't recollect his stating the amount they should lose; think he did not. Mr. Jasigi connected us all together, whereas I did not myself see the first letter; but all the transactions were founded on that. Jasigi repeated to them that I sold on the faith of that, which is not so; but to explain this would require me to go into matters which I understand by the ruling of the court it would be improper to do. I cannot entirely distinguish between what was said by either Mr. James or Stewart Brown, as a whole, but some particular expressions and certain parts are so distinct in my recollection that I can testify positively as to them. I went there regarding us all as joint claimants on Brown, Brothers & Co. for the liability. Jasigi was the spokesman in the opening, but remarks were made by all of us; the subsequent conversation was a general one. James Brown and myself were not sitting by the window. The table was oval or round, covered with a green cloth; Mr. Brown sat at the head, and I was next to him.

(Here witness stated the relative positions of the rest of the party at the table.)

When Mr. Stewart Brown made his last observation, it was by the door on the side of the room; he had gone to the door, and we were all standing close to each other at the door. Can't say whether Mr. James Brown or Mr. Jasigi was next to me, but we were all in a bunch together; we had got up from the table and Mr. Stewart Brown recapitulated what had been said, and we stood perhaps six or eight minutes listening; the substance of what he said was, that the letter was a guarded letter; that they had lost much more than we had; that when the letters were written they intended to carry Thompson & Co. through, but as they found they could not, the letters were guarded; that it was written in good faith; that we ought not to have sold on them, and that if we had called on Brown, Brothers & Co. personally, we should not have sold on them. He conveyed the meaning that if we had called personally, matters would have been explained more fully, and they could have told us much more than they could in a guarded letter, and we should not have sold. The letters were writ-

ten under the feeling that these people were not very strong; that inference was very plain from what he stated, and also that he meant us to understand that the letter of April was very guarded, and we ought not to have sold on the faith of it.

Examination in chief resumed by Bartlett.

The room in which the interview was held was a rather small one about as large as Mr. Curtis's front office. When Mr. Brown said they had made advances after the April letter was written, nothing was said about security.

And after this evidence had been given, the plaintiffs offered evidence not objected to or excluded, except as herein after stated, and tending to prove that certain statements in the letter of April 7th, 1851, material to show the property and credit of said Thompsonville Company, said Tariff Manufacturing Company, and of said Orrin Thompson, and the safety and expediency of selling them goods on credit and material, to influence and determine the judgment of one who should read the letter in regard to the safety and expediency of so selling goods on credit, were false at the time when the letter was written, and were then known to the defendant to be false, and were then known to him to be material to show the credit and property of said Thompsonville Company, said Tariff Manufacturing Company, and of said Orrin Thompson, and the safety and expediency of selling them on credit; and also evidence not objected to or excluded, except as herein after stated, and tending to prove that at the time of the writing of said letter, and in the writing thereof, the defendant did, intentionally, suppress and conceal facts and circumstances which he knew at the time, and knew to be and which were material to be stated, in order to show the amount of the property and credit of said Thompsonville Company, said Tariff Manufacturing Company, and of said Orrin Thompson, and whether it would be safe and expedient to sell them goods on credit, and which would materially qualify and change the statements already made in the letter, and render them, in material respects, less calculated and less operative to influence the judgment of one who should read the letter in favor of crediting them, and less calculated and inoperative to induce him to sell on credit to said Thompsonville Company, said Tariff Manufacturing Company, and said Orrin Thompson; and among other evidence, that within thirty days prior to said 7th of April, defendant, alone and jointly, with one Hicks, had taken conveyances in mortgage, or absolutely, of all said Orrin Thompson's property, real and personal, (with some small exceptions,) to the amount of 188,000 dollars, as security for the debt and liabilities of the house of Thompson & Co., to defendant's house and said Hicks's, amounting to over 509,000 dollars; and also offered evidence not objected to or excluded, except as herein after stated, and tending to prove that the defendant had an interest in a large degree of a pecuniary kind to sustain the credit of said Thompsonville Com-

pany, said Tariff Manufacturing Company, and said Orrin Thompson, and to induce extensive sales of goods on credit to them.

And the plaintiff offered the evidence aforesaid generally in support of the action, and also as and for evidence tending, as he alleged, to prove, and as competent and sufficient to satisfy the jury, that the defendant wrote the letter with the fraudulent intent stated in the declaration, and wrote it with intent that the letter aforesaid should be shown to persons other than Mr. Curtis, in order to induce them to sell the concerns aforesaid on credit. And plaintiff proved that he made the sales stated in the declaration, relying on, and trusting to, and in consequence of the letter of the 7th April.

But it appearing to the court, upon answers of the plaintiff's counsel to inquiries for that purpose addressed to them by the court, that they had no other evidence to offer in their opening case:

The evidence so as above offered was rejected as immaterial and as insufficient, when taken in connection with the other evidence above set forth, to authorize the jury to find a verdict for the plaintiffs.

And the court thereupon ruled and held that the plaintiffs had not maintained their action, and directed a verdict for the defendant.

Whereupon the counsel for the plaintiffs did then and there except to the aforesaid rejections, rulings, and directions of the honorable court, and thereupon the jury returned a verdict for the defendant in the words following, to wit:

The jury find that the defendant is not guilty in manner and form as the plaintiffs, in their declaration, have alleged.

JOHN MARSH,
Foreman.

And inasmuch as matters referred to, and the several instructions of the honorable court so objected to, do not appear by the record of the verdict aforesaid, the counsel on the part of said plaintiffs prayed the honorable court to set their seal to this bill of exceptions, containing the several matters proved and given in evidence, and the rejections, rulings, and directions of his honor the judge thereupon, and the exceptions thereto.

All which, being found to be true, are allowed.

In witness whereof I have hereunto set my hand and seal.

P. SPRAGUE, *Judge.* [SEAL.]

UNITED STATES OF AMERICA,
Massachusetts district, ss.

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify, that the foregoing is a true copy of the record, and of all proceedings in the cause of Joseph Jasigi and Thomas A. Goddard, plaintiffs, versus James Brown, principal, and Thomas B. Curtis, trustee.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Boston, in said district, this seventh day of February, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States of America the seventy-eighth.

[SEAL.]

H. W. FULLER, *Clerk.*

Writ of error.

UNITED STATES, *ss.*

The President of the United States, to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

[SEAL.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Joseph Jasigi & Thomas A. Goddard, both of Boston, in the State of Massachusetts, merchants, plaintiffs, and James Brown, of New York, in the State of New York, merchant, principal defendant, and Thomas B. Curtis, of said Boston, trustee of said Brown, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said Jasigi & Goddard, as in their exceptions and complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this seventh day of February, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the seventy-eighth.

H. W. FULLER, *Clerk.*

Allowed by

P. SPRAGUE,
Judge of U. S. court, Mass. dist.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

[SEAL.]

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, within and for the district of Massachusetts, in pursuance of the command contained in the within writ of